

RCW 11.108.025 Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations. Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) or 2523(f) of the Internal Revenue Code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the Internal Revenue Code. Further, the fiduciary shall have the power to make generation-skipping transfer tax allocations under section 2632 of the Internal Revenue Code.

(2) The fiduciary making an election under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code or making an allocation under section 2632 of the Internal Revenue Code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) The fiduciary of a trust, if an election is made under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code, if an allocation is made under section 2632 of the Internal Revenue Code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, if:

(a) The terms of the separate trusts which result are substantially identical to the terms of the trust before division;

(b) In the case of a trust otherwise qualifying for the marital deduction under the Internal Revenue Code, the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction; and

(c) The allocation of assets shall be based upon the fair market value of the assets at the time of the division.

(4) For state and federal estate tax purposes, a fiduciary may make inconsistent elections under section 2056(b)(7) or 2056A of the Internal Revenue Code and under similar provisions of applicable state law. [2006 c 360 § 5; 1997 c 252 § 83; 1993 c 73 § 4; 1991 c 6 § 1; 1990 c 179 § 2; 1988 c 64 § 29.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.